

WP(C) 7929/2003

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA

All the writ petitions pertain to selection and appointment to the post of Post Graduate teacher in Higher Secondary Schools. They have been heard together and are being disposed of by this common order.

While in WP(C) 7652/2003 and WP(C) 7654/2003, the petitioners have prayed for their upgradation from the post of graduate teacher to that of post graduate teacher in the respective subjects on the basis of their requisite qualification and setting aside of the advertisements issued for the posts, in WP(C) 7929/2003, the petitioner has prayed for setting aside and quashing of the advertisement dated 8.2.2003 (Annexure-C) by which applications were invited for the post of post graduate teacher (Economics). According to the said petitioner, since as graduate teacher, he has been drawing higher salary and for the higher post of post graduate teacher, only a fixed salary which was less than that what the petitioner has been drawing, he did not respond to the advertisement. It is the apprehension of the petitioner that in due course, the selected candidate for the post of post graduate teacher appointed on fixed pay would get regularization of service and consequently would be paid salary in the time scale of pay attached to the post of post graduate teacher. It is on this count, the petitioner has challenged the advertisement.

There is interim stay in all the writ petitions, pursuant to which the impugned advertisement could not be given effect to.

In the 4th writ petition i.e. WP(C) 3398/2004, the prayer of the petitioner is to give him upgradation to the post of post graduate teacher in Assamese, which according to the petitioner is lying vacant in the School in which he has been serving as graduate teacher.

From the above, what is seen is that the petitioners involved in WP(C) 7652/03 ; WP(C) 7654/2003 and WP(C) No. 3398/2004 are seeking upgradation from the post of graduate teacher to that of post graduate teacher. In this connection, the petitioners have referred to the Assam Secondary Education (Provincialised) Service Rules, 2003. Rule 7 of the said rules makes provisions for recruitment to the post of post graduate teacher of provincialised Higher Secondary Schools and selection procedure thereof. Under Rule 7(2)(b)(ii), graduate teacher with post graduate degree in relevant subjects of the same School will get preference in selection for appointment of post graduate teacher.

According to the petitioners, they being the serving graduate teachers of the respective Schools with requisite qualification for being appointed as post graduate teacher, they are entitled to get preference in terms of the said rules.

In WP(C) 3398/2004, the prayer of the petitioner is to grant him automatic upgradation in view of his requisite qualification for being appointed as post graduate teacher. The claim so made is on account of his service as graduate teacher in the school.

I have heard Mr. A.R. Sikdar, learned counsel for the petitioners in WP(C) No. 7652/03 and WP(C) 7654/03 as well as Mr. S. Kataki, learned counsel for petitioner in WP(7929/2003. I have also heard Mr. M. Kalita, learned counsel representing the petitioner in WP(C) 3398/2004. Ms. P. Chakraborty as well as Ms. B. Chakraborty, learned Standing Counsels, Education Department, have also advanced their arguments.

As noted above, in WP(C) 7652/2003 & WP(C) No. 7654/2003, the prayer of the petitioners is to consider their case in terms of the aforesaid rules to get preference to the serving graduate teachers in the matter of appointment to the post of post graduate teacher. Such preference is required to be given to the serving graduate teachers who possess the requisite qualification.

Having regard to the prayer made in the writ petitions, the said 3 (three) writ petitions are disposed of providing that while conducting the selection following the due procedure, the selection committee shall take into account the aforesaid provisions of the rules and proceed accordingly. So far as the 4th writ petition is concerned i.e. WP(C) 3398/2004, no direction can be issued for au

automatic upgradation of the petitioner to the post of post graduate teacher as the recruitment rule does not provide for such automatic upgradation. The petitioner will have to earn his promotion / appointment to the post of post graduate teacher through selection. In the event of making such selection, the petitioner will be at liberty to participate in the same.

With the above directions and observations, all the writ petitions are disposed of. Since a considerable period of time has elapsed from the dates of the impugned advertisements, which are also under order of stay in this proceeding. It will be appropriate for the respondents to conduct a fresh selection on the basis of fresh advertisement.

There shall be no order as to costs.